

EXHIBIT 20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
Plaintiffs :
v. : No. 1:23-cv-00108
GOOGLE, LLC, :
Defendants. :

Tuesday, August 15, 2023

Video Deposition of ALLEN OWENS,
taken at the Law Offices of Paul, Weiss, Rifkind,
Wharton & Garrison LLP, 2001 K St NW, Washington,
DC, beginning at 9:37 a.m. Eastern Standard Time,
before Ryan K. Black, Registered Professional
Reporter, Certified Livenote Reporter and Notary
Public in and for the District of Columbia

Job No. CS6037511

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>4 ANTITRUST DIVISION</p> <p>5 BY: JIMMY MCBIRNEY, ESQ</p> <p>6 CHASE PRITCHETT, ESQ</p> <p>7 ALVIN CHU, ESQ</p> <p>8 MARK SOSNOWSKY, ESQ - Via Zoom</p> <p>9 KATHERINE CLEMONS, ESQ - Via Zoom</p> <p>10 JULIA TARVER-WOOD, ESQ - Via Zoom</p> <p>11 450 5th Street, N W</p> <p>12 Washington, DC 20530</p> <p>13 202 514 2414</p> <p>14 jimmy mcbirney@usdoj gov</p> <p>15 chase pritchett@usdoj gov</p> <p>16 alvin chu@usdoj gov</p> <p>17 mark sosnowsky@usdoj gov</p> <p>18 katherine clemons@usdoj gov</p> <p>19 julia tarver-wood@usdoj gov</p> <p>20 Representing - The United States of America</p> <p>21</p> <p>22</p> <p>23</p> <p>24 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP,</p> <p>25 BY: MARTHA L GOODMAN, ESQ</p> <p>LEAH HIBBLER, ESQ</p> <p>2001 K St NW,</p> <p>Washington, DC</p> <p>202 223 7341</p> <p>mgoodman@paulweiss com</p> <p>lhibbler@paulweiss com</p> <p>Representing - Google LLC</p> <p>ALSO PRESENT:</p> <p>Orson Braithwaite - Legal Videographer</p> <p>Ann Bruck - Department of the Navy</p>	<p style="text-align: right;">Page 4</p> <p>1 THE VIDEOGRAPHER: Good morning. We're</p> <p>2 going on the record at 9:37 a m. on August 15th,</p> <p>3 2023. Please note that the microphones are</p> <p>4 sensitive and may pick up whispering and private</p> <p>5 conversations. Please mute your phones at this</p> <p>6 time. Audio and video recording will continue to</p> <p>7 take place unless all parties agree to go</p> <p>8 off the record.</p> <p>9 This is Media Unit 1 of the</p> <p>10 video-recorded deposition of Mr. Allen Owens</p> <p>11 in the matter of United States, et al., versus</p> <p>12 Google LLC, filed in the United States District</p> <p>13 Court, Eastern District of Virginia, Alexandria</p> <p>14 Division. Case Number 1:23-cv-00108-LMB-JFA.</p> <p>15 My name is Orson Braithwaite,</p> <p>16 representing Veritext Legal Solutions, and I'm</p> <p>17 the videographer. The court reporter is Ryan</p> <p>18 Black from the firm Veritext Legal Solutions.</p> <p>19 Counsel will now state their appearances</p> <p>20 and affiliations for the record.</p> <p>21 MS. GOODMAN: Martha Goodman of the law</p> <p>22 firm Paul Weiss on behalf of Google LLC, and I'm</p> <p>23 joined by my colleague Leah Hibbler.</p> <p>24 MR. MCBIRNEY: Jim McBirney on behalf of</p> <p>25 the Department of Justice on behalf of the United</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 TESTIMONY OF: ALLEN OWENS PAGE</p> <p>3 By Ms. Goodman.....6</p> <p>4 EXHIBITS</p> <p>5 EXHIBIT DESCRIPTION PAGE</p> <p>6 Exhibit 52 a document Bates Numbered</p> <p>NAVY-ADS174029 through</p> <p>NAVY-ADS174060.....62</p> <p>7 Exhibit 53 a document Bates Numbered</p> <p>NAVY-ADS256935 through</p> <p>NAVY-ADS257031.....97</p> <p>8 Exhibit 54 a document Bates Numbered</p> <p>NAVY-ADS12756 through</p> <p>NAVY-ADS12800.....102</p> <p>9 Exhibit 55 a document Bates Numbered</p> <p>NAVY-ADS241136 through</p> <p>NAVY-ADS241143.....111</p> <p>10 Exhibit 56 a document Bates Numbered</p> <p>NAVY-ADS15543 through</p> <p>NAVY-ADS15622.....130</p> <p>11 Exhibit 57 a document Bates Numbered</p> <p>NAVY-ADS19114 through</p> <p>NAVY-ADS19182.....146</p> <p>12 Exhibit 58 a document Bates Numbered</p> <p>NAVY-ADS45197 through</p> <p>NAVY-ADS45206.....172</p> <p>13 Exhibit 59 a document Bates Numbered</p> <p>NAVY-ADS103897 through</p> <p>NAVY-ADS103900.....182</p> <p>14 Exhibit 60 a document Bates Numbered</p> <p>NAVY-ADS28530 through</p> <p>NAVY-ADS28531.....187</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 States and the witness.</p> <p>2 MR. PRITCHETT: Chase Pritchett on</p> <p>3 behalf of the United States.</p> <p>4 MR. CHU: Alvin Chu on behalf of the</p> <p>5 United States.</p> <p>6 MS. GOODMAN: And then will any</p> <p>7 attorneys appearing remotely please state your</p> <p>8 presence.</p> <p>9 MR. SOSNOWSKY: Mark Sosnowsky, U.S.</p> <p>10 Department of Justice.</p> <p>11 MS. CLEMONS: Katherine Clemons,</p> <p>12 Department of Justice.</p> <p>13 MS. GOODMAN: Is there any --</p> <p>14 MS. BRUCK: Ann Bruck, Department of</p> <p>15 Navy.</p> <p>16 THE VIDEOGRAPHER: We have a Ms. Wood.</p> <p>17 MS. TARVER-WOOD: Yes. This is Julia</p> <p>18 Tarver-Wood from DOJ. I'm not officially</p> <p>19 entering an appearance. I'll be in and out</p> <p>20 throughout the day.</p> <p>21 THE VIDEOGRAPHER: Thank you. Will the</p> <p>22 court reporter please swear in the witness?</p> <p>23 * * *</p> <p>24 Whereupon --</p> <p>25 ALLEN OWENS,</p>

<p style="text-align: right;">Page 86</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. And thus you don't recall whether they</p> <p>3 permit you to delete files, correct?</p> <p>4 MR. MCBIRNEY: Objection. Asked and</p> <p>5 answered.</p> <p>6 THE WITNESS: Yeah. My testimony is,</p> <p>7 sitting here today, I do not recall the exact</p> <p>8 stipulations of that policy.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And, therefore, correct, you don't</p> <p>11 recall whether those policies permit you to</p> <p>12 delete files?</p> <p>13 MR. MCBIRNEY: Objection.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Is that accurate?</p> <p>16 MR. MCBIRNEY: Objection. Asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: Yeah. So my testimony is,</p> <p>19 sitting here today, I do not recall the exact</p> <p>20 stipulations of that policy.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Okay. And so you can't answer whether,</p> <p>23 as a result of your inability to recall the exact</p> <p>24 stipulations of this -- of the policy, you cannot</p> <p>25 an -- you don't recall whether or not that policy</p>	<p style="text-align: right;">Page 88</p> <p>1 direction of a lawyer, that's privileged and I'd</p> <p>2 instruct you not to answer. If you received</p> <p>3 communications about preserving documents that do</p> <p>4 not fall into those categories and you are</p> <p>5 confident that they do not come from counsel, you</p> <p>6 can answer.</p> <p>7 THE WITNESS: Yeah. Then I cannot</p> <p>8 answer the question without revealing privileged</p> <p>9 conversations.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And for the record -- and this is a yes</p> <p>12 or no question -- have you received any direction</p> <p>13 from anybody with respect to preserving documents</p> <p>14 related to this litigation?</p> <p>15 MR. MCBIRNEY: You can answer that yes</p> <p>16 or no.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. When did you receive such direction?</p> <p>20 A. I don't recall the exact time frame.</p> <p>21 Earlier this year in 2023.</p> <p>22 Q. Was it before or after you learned about</p> <p>23 this lawsuit?</p> <p>24 A. I don't recall.</p> <p>25 Q. Prior to this lawsuit, have you ever</p>
<p style="text-align: right;">Page 87</p> <p>1 permits you to delete files. Is that accurate?</p> <p>2 MR. MCBIRNEY: Objection. Asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: So it's my testimony that,</p> <p>5 sitting here today, I don't recall the specific</p> <p>6 stipulations of that policy.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Okay. And, therefore, you can't testify</p> <p>9 one way or another to what that policy says with</p> <p>10 respect to the deletion of files, correct?</p> <p>11 MR. MCBIRNEY: Objection. Asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: Yeah. Those were not my</p> <p>14 words. I said, sitting here today, I don't</p> <p>15 remember the exact stipulations of the policy.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Other than a lawyer, has anybody told</p> <p>18 you anything about preserving documents with</p> <p>19 respect to this litigation?</p> <p>20 THE WITNESS: I'm not sure of the</p> <p>21 communications I received, whether those would be</p> <p>22 privileged or not.</p> <p>23 MR. MCBIRNEY: If you received</p> <p>24 communications regarding preserving documents</p> <p>25 that were either from a lawyer or at the</p>	<p style="text-align: right;">Page 89</p> <p>1 requested legal advice from the Department of</p> <p>2 Justice Antitrust Division?</p> <p>3 A. No.</p> <p>4 Q. Prior to learning about this lawsuit,</p> <p>5 have you ever requested legal advice from the</p> <p>6 Department of Justice Antitrust Division?</p> <p>7 A. No.</p> <p>8 Q. Since receiving instructions with</p> <p>9 respect to preserving documents related to this</p> <p>10 litigation, have you deleted any documents on any</p> <p>11 of your devices?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. So you've testified that VMLY&R is the</p> <p>14 ad agency for the Navy; is that correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And they have been the ad agency for the</p> <p>17 Navy since, approximately, 2016. Is that</p> <p>18 accurate?</p> <p>19 A. They have been the ad agency since</p> <p>20 approximately 2016, yes.</p> <p>21 Q. Okay. And their contract with the Navy</p> <p>22 was renewed or reentered into in 2021. Is that</p> <p>23 accurate?</p> <p>24 A. Yes, it was renewed in 2021.</p> <p>25 Q. Okay. Other than the VMLY&R, is there</p>

<p style="text-align: right;">Page 90</p> <p>1 any other agency -- ad agency engaged by the</p> <p>2 Naval -- Navy Recruiting Command related to</p> <p>3 advertising?</p> <p>4 MR. MCBIRNEY: Objection; foundation.</p> <p>5 THE WITNESS: Our contract is with</p> <p>6 VMLY&R. It's my understanding they have other</p> <p>7 businesses and agencies that work with them. But</p> <p>8 our contract is with VMLY&R.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And are you aware of any contract</p> <p>11 between the Navy and any other ad agency related</p> <p>12 to advertising?</p> <p>13 A. No.</p> <p>14 Q. Were you involved in the selection of</p> <p>15 VMLY&R when their contract was renewed in 2021?</p> <p>16 THE WITNESS: Am I allowed to discuss</p> <p>17 contractual selection items?</p> <p>18 MR. MCBIRNEY: You can answer that</p> <p>19 question yes or no and we'll go from there.</p> <p>20 THE WITNESS: Okay. Can you ask that</p> <p>21 question again?</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Were you involved in the selection of</p> <p>24 VMLY&R when their contract was renewed in 2021?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 selecting an advertising agency, what are the</p> <p>2 things that you looked for in the non-price</p> <p>3 proposals that mattered to you in selecting a</p> <p>4 business to contract with?</p> <p>5 A. Sure. I don't recall the specific</p> <p>6 criteria. That was a few years ago.</p> <p>7 Q. How about generally? What do you</p> <p>8 recall what mattered to you in terms of non-price</p> <p>9 proposals when selecting an ad agency?</p> <p>10 A. In general, that they demonstrated in</p> <p>11 their write-up a thorough understanding of the</p> <p>12 requirement and ability to meet the requirement.</p> <p>13 Q. And what was the requirement that the</p> <p>14 Navy put forward with respect to finding a</p> <p>15 contractor related to advertising?</p> <p>16 A. Sure. It was a -- a work statement that</p> <p>17 was issued -- multi-page work statement.</p> <p>18 Q. What are the kinds of things that the</p> <p>19 Navy wanted from an advertiser?</p> <p>20 MR. MCBIRNEY: Objection; vague.</p> <p>21 THE WITNESS: Yeah. Sitting here today,</p> <p>22 I -- I don't recall the specifics contained in</p> <p>23 that work statement, --</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. How about generally?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. What was your involvement?</p> <p>2 A. I was on the panel of folks reviewing</p> <p>3 the non-price proposals from all vendors.</p> <p>4 Q. And when you say "reviewing the</p> <p>5 non-price proposals," what do you mean by that?</p> <p>6 A. So to review -- so when a contract is</p> <p>7 renewed, multiple businesses can apply for that</p> <p>8 contract, and non-price proposals are part of</p> <p>9 that bidding process. And then a board of people</p> <p>10 will look at that and review those, and I was on</p> <p>11 that panel.</p> <p>12 Q. What are the kinds of non-price</p> <p>13 proposals that are put forward as part of that</p> <p>14 bid -- bidding process?</p> <p>15 MR. MCBIRNEY: Object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: You'd have to be more</p> <p>18 specific. I'm sorry.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Well, what do you mean by non-price</p> <p>21 proposals? What do those entail?</p> <p>22 A. Those are proposals of how the vendor or</p> <p>23 the business would satisfy the requirements given</p> <p>24 in the work statement in the RFQ.</p> <p>25 Q. And so specifically with respect to</p>	<p style="text-align: right;">Page 93</p> <p>1 A. -- but it was for advertising services.</p> <p>2 Q. Okay. And so what kind of things are</p> <p>3 important to you when you're selecting a ad</p> <p>4 agency to provide advertising services?</p> <p>5 MR. MCBIRNEY: Objection; form and asked</p> <p>6 and answered.</p> <p>7 THE WITNESS: In general, that they</p> <p>8 have a demonstrated ability to perform and an</p> <p>9 understanding of those requirements that are</p> <p>10 contained in the work statement document.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. What requirements, if any, do you</p> <p>13 recall that were contained in the work statement</p> <p>14 document put out by the Navy with respect to</p> <p>15 advertising?</p> <p>16 A. Yeah. That was -- that was a large</p> <p>17 document over two years ago. I don't recall the</p> <p>18 specifics of that document.</p> <p>19 Q. How about generally?</p> <p>20 A. Generally, as I testified a moment ago,</p> <p>21 that they have a thorough understanding of -- of</p> <p>22 the requirements in there and that they have a</p> <p>23 demonstrated ability to perform those</p> <p>24 requirements.</p> <p>25 Q. Right. My question is what, if</p>

<p style="text-align: right;">Page 94</p> <p>1 anything, do you generally recall about what the</p> <p>2 requirements were?</p> <p>3 MR. MCBIRNEY: Objection. Asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: Yeah. I would be</p> <p>6 assuming, and -- and I don't want to do that.</p> <p>7 I -- I can't -- I can't remember specifics from</p> <p>8 that document.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. And can you remember anything generally</p> <p>11 with respect to the work requirements the Navy</p> <p>12 -- that the Navy put out with respect to</p> <p>13 selecting an advertiser -- ad agency, I should</p> <p>14 say?</p> <p>15 A. I cannot.</p> <p>16 Q. Okay. Who was involved in evaluating</p> <p>17 the price proposal as part of the process to</p> <p>18 select an ad agency?</p> <p>19 A. It's my understanding that that was</p> <p>20 done at the FLC, Fleet Logistics Center --</p> <p>21 Q. And who --</p> <p>22 A. -- by the contracting officer.</p> <p>23 Q. Who was the contracting officer at the</p> <p>24 Fleet Logistics Center evaluating the price</p> <p>25 proposal?</p>	<p style="text-align: right;">Page 96</p> <p>1 taking over that role in March of 2020, you had</p> <p>2 experience working with VMYL&R, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And so what -- what, if</p> <p>5 anything, based on that experience, did you find</p> <p>6 significant with respect to selecting VMLY&R for</p> <p>7 a contract renewal?</p> <p>8 MR. MCBIRNEY: Objection. Assumes</p> <p>9 facts. Vague.</p> <p>10 THE WITNESS: Yeah. I -- I don't</p> <p>11 recall the specifics of the review of the</p> <p>12 non-price proposals and what was considered and</p> <p>13 what was put down there.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Is there a reason you were not involved</p> <p>16 in evaluating the pricing proposal for this</p> <p>17 contract selection?</p> <p>18 MR. MCBIRNEY: Objection. Assumes</p> <p>19 facts.</p> <p>20 THE WITNESS: Yeah. I -- I'm not</p> <p>21 certain why that's the case. I just know that to</p> <p>22 be the case, is that we were reviewing the</p> <p>23 non-price proposal.</p> <p>24 MS. GOODMAN: Can I have 22?</p> <p>25 I'm marking Exhibit 53 NAVY-ADS256935</p>
<p style="text-align: right;">Page 95</p> <p>1 A. I believe it was Ms. Lozzi.</p> <p>2 Q. Did you have any conversations with</p> <p>3 Ms. Lozzi with respect to the price proposal put</p> <p>4 forward by various businesses at this time?</p> <p>5 A. No.</p> <p>6 MR. MCBIRNEY: Object to the form of the</p> <p>7 question.</p> <p>8 Make sure you wait for me.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Did you review the price proposal</p> <p>11 submitted by VMYL&R as part of the 2021 contract</p> <p>12 selection process?</p> <p>13 A. I do not believe so.</p> <p>14 Q. Did you review the non-price proposal</p> <p>15 put forward by them?</p> <p>16 A. Yes.</p> <p>17 Q. Prior to the contract selection process,</p> <p>18 you had experience working with VMYL&R, correct?</p> <p>19 A. Can you be more specific?</p> <p>20 Q. So in March of 2020 when you took on the</p> <p>21 job as deputy director of marketing, VMYL&R was</p> <p>22 the contractor providing ad services, correct?</p> <p>23 A. Yes. VMLY&R was the contractor at -- at</p> <p>24 the time when I took over in March of 2020, yes.</p> <p>25 Q. Okay. And so as a result of your</p>	<p style="text-align: right;">Page 97</p> <p>1 through 257031.</p> <p>2 (Exhibit No. 53, a document Bates</p> <p>3 Numbered NAVY-ADS256935 through NAVY-ADS257031,</p> <p>4 was introduced.)</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And, sir, do you recognize this as the</p> <p>7 contract entered into between the Navy and VMYL&R</p> <p>8 in 2021?</p> <p>9 A. I'm going to need a moment to just</p> <p>10 review this.</p> <p>11 Q. Sure.</p> <p>12 A. (Reviews document.)</p> <p>13 Okay. Can you ask that question again?</p> <p>14 Q. Yes. Do you recognize Exhibit 53 as the</p> <p>15 contract entered into between the Navy and VMYL&R</p> <p>16 in 2021?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. Except it may be that it was with Y&R</p> <p>20 at the time. I believe there was a name change</p> <p>21 during the course.</p> <p>22 Q. So Y&R, you're referring to in Box 17a.</p> <p>23 where it says Young & Rubicam; is that right?</p> <p>24 A. Correct.</p> <p>25 Q. And Young & Rubicam at some point became</p>

25 (Pages 94 - 97)

Page 98	Page 100
<p>1 VY -- VMLY&R?</p> <p>2 A. VMLY&R. The Y&R remained from this.</p> <p>3 Q. VMLY&R.</p> <p>4 A. Yep.</p> <p>5 Q. And is it in -- as part of your job as</p> <p>6 the contracting officer representative or the COR</p> <p>7 on this contract, are you familiar with the terms</p> <p>8 of the contract?</p> <p>9 A. Yes.</p> <p>10 Q. And if you look at the fifth page of</p> <p>11 the document -- I'm sorry. My copy doesn't have</p> <p>12 Bates Numbers at the bottom, but -- sorry. Go</p> <p>13 back a page.</p> <p>14 Thank you.</p> <p>15 Bates ending in 937.</p> <p>16 A. I'm sorry?</p> <p>17 Q. 937, the bottom -- the numbers at</p> <p>18 the bottom of the page, those are called Bates</p> <p>19 Numbers, I want to direct your attention to the</p> <p>20 page ending in 937.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. You see where it says Item Number</p> <p>23 2?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And where it says "Max Amount" on</p>	<p>1 THE WITNESS: Not to my knowledge.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. And then if you turn to page ending in</p> <p>4 948 where it sees -- where it says Item Number</p> <p>5 2002 on the left-hand side, --</p> <p>6 A. Mm-hmm.</p> <p>7 Q. -- is this the not-to-exceed price for</p> <p>8 subsequent years of this contract?</p> <p>9 A. For a subsequent year of the contract,</p> <p>10 yes.</p> <p>11 Q. Fair.</p> <p>12 And so where we -- if you flip a few</p> <p>13 pages, where it -- ending in 953, option Line</p> <p>14 Item 3002 where it says "option," that's for</p> <p>15 another subsequent year, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And so each subsequent year is denoted</p> <p>18 by a different line item number beginning with</p> <p>19 two, three or four, depending on the year of the</p> <p>20 contract option, correct?</p> <p>21 MR. MCBIRNEY: Object to the form.</p> <p>22 THE WITNESS: Give me just one moment to</p> <p>23 look at this. I want to make sure I give you an</p> <p>24 accurate answer.</p> <p>25 Okay. Can you ask that question again?</p>
Page 99	Page 101
<p>1 the right-hand side you see it says "NTE"?</p> <p>2 A. Yes.</p> <p>3 Q. Does that mean not to exceed?</p> <p>4 A. That's my understanding, yes.</p> <p>5 Q. Okay. And so in particular Line Item</p> <p>6 Number 2 is for media placement not to exceed the</p> <p>7 approximately \$56 million amount listed on this</p> <p>8 page; is that right?</p> <p>9 A. Yes. That would appear correct.</p> <p>10 Q. Okay. And so this contract does not set</p> <p>11 the amount of media that must be bought; is that</p> <p>12 correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And this contract does not set the price</p> <p>15 at which media should be bought, correct?</p> <p>16 MR. MCBIRNEY: Objection. Calls for a</p> <p>17 legal conclusion.</p> <p>18 THE WITNESS: Yeah. I mean, I don't</p> <p>19 have the legal expertise to answer that question.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. This contract doesn't have anything in</p> <p>22 it that says what price to be paid for any</p> <p>23 particular media purchase, correct?</p> <p>24 MR. MCBIRNEY: Same objection. The</p> <p>25 document speaks for itself.</p>	<p>1 I'm sorry.</p> <p>2 BY MS. GOODMAN:</p> <p>3 Q. Yeah. So the numbers one, two, three</p> <p>4 and four in front of these various line items,</p> <p>5 those represent the contract terms for subsequent</p> <p>6 years under this contract, correct?</p> <p>7 MR. MCBIRNEY: Same objection.</p> <p>8 THE WITNESS: To my knowledge, those</p> <p>9 first -- that first digit number denotes</p> <p>10 subsequent years.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Okay. And if you flip to the page</p> <p>13 ending in 7028, I want to direct your</p> <p>14 attention to where it says "Attachments to</p> <p>15 solicitation/contract." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you ever reviewed the</p> <p>18 attachments referenced here as a result of your</p> <p>19 work as the contracting officer representative on</p> <p>20 this contract?</p> <p>21 A. Yes.</p> <p>22 Q. And those attachments are -- would you</p> <p>23 consider those attachments part of this contract?</p> <p>24 A. I would consider them attachments to the</p> <p>25 contract.</p>

<p style="text-align: right;">Page 118</p> <p>1 placing ads with using -- utilizing a specific</p> <p>2 partner or considering alternate -- alternate</p> <p>3 spends. But there's nothing -- there's nothing</p> <p>4 routine or specific.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Okay. Is it often the case that you</p> <p>7 approve their recommended plan without edit?</p> <p>8 MR. MCBIRNEY: Objection; vague.</p> <p>9 THE WITNESS: Yeah. I can't recall</p> <p>10 the -- the number of edits that I would issue to</p> <p>11 them.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Do you -- have you ever approved a</p> <p>14 recommended plan without making an edit?</p> <p>15 A. Sitting here today, I -- I don't recall.</p> <p>16 Q. One way or another?</p> <p>17 A. Right.</p> <p>18 Q. How does VMLY&R go about purchasing ads?</p> <p>19 MR. MCBIRNEY: Objection; foundation.</p> <p>20 And vague.</p> <p>21 THE WITNESS: Yeah. So we have the</p> <p>22 contract with VMLY&R. And we set the strategy</p> <p>23 and have them come to us with those recommended</p> <p>24 tactics. But we don't tell them how to go and</p> <p>25 purchase it, so ...</p>	<p style="text-align: right;">Page 120</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. Okay. So you don't know anything about</p> <p>3 any contractual relationships between VMLY&R and</p> <p>4 Wavemaker. Is that accurate?</p> <p>5 A. I don't know the exact legal business</p> <p>6 relationship between the two.</p> <p>7 Q. Do you have any understanding about the</p> <p>8 contractual relationship between the two?</p> <p>9 MR. MCBIRNEY: Objection. Assumes</p> <p>10 facts.</p> <p>11 THE WITNESS: Yeah. As stated, I do</p> <p>12 not know the specific legal business definition</p> <p>13 or arrangement between the two.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Okay. Do you have any understanding</p> <p>16 about any relationship between VMLY&R and</p> <p>17 Wavemaker with respect to digital ad purchases</p> <p>18 on behalf of the Navy?</p> <p>19 A. Yeah. Sitting here today, I -- I don't</p> <p>20 know that -- that specific legal business</p> <p>21 arrangement.</p> <p>22 Q. Okay. Do you know if any contract</p> <p>23 exists between VMLY&R and Wavemaker?</p> <p>24 A. Sitting here today, I don't have the</p> <p>25 specific business contractual relationship</p>
<p style="text-align: right;">Page 119</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. So sitting here today, do you know how</p> <p>3 VMLY&R goes about purchasing ads?</p> <p>4 MR. MCBIRNEY: Objection; vague.</p> <p>5 THE WITNESS: Sitting here today, I</p> <p>6 don't know their exact process of purchasing the</p> <p>7 ads on our behalf.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Okay. How about at a more general</p> <p>10 level? Rather than their exact process, do you</p> <p>11 know generally how they go about purchasing ads?</p> <p>12 A. Sitting here today, it's my testimony</p> <p>13 that I am not aware of their process to go and</p> <p>14 purchase the ads.</p> <p>15 Q. Okay. What does Wavemaker do?</p> <p>16 A. It's my understanding that Wavemaker is</p> <p>17 the arm of VMLY&R which purchases the ads.</p> <p>18 Q. Okay. So do you have an understanding</p> <p>19 with respect to Wavemaker and VMLY&R with respect</p> <p>20 to purchasing of ads?</p> <p>21 MR. MCBIRNEY: Object to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: So our contract is with</p> <p>24 VMLY&R, and I'm not privy to their exact business</p> <p>25 relationships with -- with their companies.</p>	<p style="text-align: right;">Page 121</p> <p>1 between the two.</p> <p>2 Q. So you don't know if any contract</p> <p>3 exists; is that correct?</p> <p>4 MR. MCBIRNEY: Objection. Asked and</p> <p>5 answered.</p> <p>6 THE WITNESS: Sitting here today, I am</p> <p>7 unaware of the specific, exact legal business</p> <p>8 arrangement between those two entities.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay. I understand you don't know</p> <p>11 the exact legal business arrangement between</p> <p>12 Wavemaker and VMLY&R.</p> <p>13 A. Mm-hmm.</p> <p>14 Q. I want to know whether you have any</p> <p>15 knowledge or awareness of any contract between</p> <p>16 the two?</p> <p>17 MR. MCBIRNEY: Objection. Asked and</p> <p>18 answered.</p> <p>19 THE WITNESS: I'm aware of our contract</p> <p>20 with VMLY&R, and I'm unaware of the specific</p> <p>21 arrangement between them and Wavemaker.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Have you ever seen a contract between</p> <p>24 VMLY&R and Wavemaker?</p> <p>25 MR. MCBIRNEY: Objection. Asked and</p>

<p style="text-align: right;">Page 122</p> <p>1 answered.</p> <p>2 THE WITNESS: I do not recall seeing the</p> <p>3 specific contract between the two.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. Is it important to you to</p> <p>6 understand what the specific legal arrangement is</p> <p>7 between VMLY&R and Wavemaker in your capacity as</p> <p>8 the contracting officer representative for the</p> <p>9 contract with Y&R?</p> <p>10 A. No.</p> <p>11 Q. Why not?</p> <p>12 A. That specific legal arrangement would be</p> <p>13 important to the contracting officer issuing the</p> <p>14 contract with VMLY&R.</p> <p>15 Q. And why do you say it would be important</p> <p>16 to the contracting officer?</p> <p>17 MR. MCBIRNEY: Objection; foundation.</p> <p>18 THE WITNESS: That is a contractual</p> <p>19 issue of which the contracting officer handles</p> <p>20 those issues.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Okay. So do you know one way or another</p> <p>23 if the contracting officer has any knowledge or</p> <p>24 awareness of a legal arrangement between VMLY&R</p> <p>25 and Wavemaker?</p>	<p style="text-align: right;">Page 124</p> <p>1 Navy under the contract?</p> <p>2 A. As I testified earlier, I don't know</p> <p>3 their exact process of how they go about</p> <p>4 purchasing the media.</p> <p>5 Q. Okay. Do you ever discuss with</p> <p>6 Wavemaker what prices they have negotiated for</p> <p>7 any particular media purchase?</p> <p>8 A. I have on occasion.</p> <p>9 Q. What occasions are you recalling sitting</p> <p>10 here today?</p> <p>11 A. Sitting here today, I can recollect</p> <p>12 vaguely some conversations of asking for</p> <p>13 clarifications on CPMs if either the math</p> <p>14 didn't add up or the cost seemed a little high.</p> <p>15 Q. And when you say "CPM," what do you</p> <p>16 mean?</p> <p>17 A. The cost per impressions or cost per</p> <p>18 mille.</p> <p>19 Q. How many conversations are you</p> <p>20 recollecting with respect to seeking</p> <p>21 clarification on CPMs with Wavemaker?</p> <p>22 A. I can't recollect an exact amount.</p> <p>23 Q. Approximately how many?</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. Do you know how Wavemaker gets</p>
<p style="text-align: right;">Page 123</p> <p>1 A. I can't speak on behalf of someone else.</p> <p>2 Q. Okay. So you don't know if the</p> <p>3 contracting officer has any knowledge or</p> <p>4 awareness of such a contractual arrangement,</p> <p>5 correct?</p> <p>6 A. My testimony is that I'm not going to</p> <p>7 speak on behalf of someone else of what they do</p> <p>8 or don't know.</p> <p>9 Q. Okay. Have you ever had any</p> <p>10 conversations with the contracting officer</p> <p>11 about any legal arrangement between VMLY&R and</p> <p>12 Wavemaker?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Okay. So to your knowledge, what</p> <p>15 -- what does Wavemaker do with respect to the</p> <p>16 contract between VMLY&R and the Navy?</p> <p>17 MR. MCBIRNEY: Object to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: To my knowledge, as I</p> <p>20 testified a moment ago, it's my understanding</p> <p>21 that they do the media purchasing for the Navy as</p> <p>22 part of that contract.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. Okay. Do you know anything about how</p> <p>25 Wavemaker goes about the media purchasing for the</p>	<p style="text-align: right;">Page 125</p> <p>1 paid?</p> <p>2 MR. MCBIRNEY: Objection; vague.</p> <p>3 THE WITNESS: I don't know how they get</p> <p>4 paid.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Do you know if Wavemaker is paid before</p> <p>7 or after Navy makes any payment to VMLY&R under</p> <p>8 the contract?</p> <p>9 A. I don't know how Wavemaker gets paid.</p> <p>10 Q. And you don't know when they get paid</p> <p>11 relative to the Navy's payments under the</p> <p>12 contract. Is that accurate?</p> <p>13 A. I am unaware how or when they get paid.</p> <p>14 Q. What are the Key Performance Indicators</p> <p>15 that are important to the Navy with respect to</p> <p>16 digital media buys?</p> <p>17 A. So KPIs important to -- to the Navy</p> <p>18 could range from impressions, engagements, gross</p> <p>19 leads, program-eligible leads, qualified and</p> <p>20 interested leads, contracts, website views,</p> <p>21 click-through rates --</p> <p>22 MS. GOODMAN: I haven't marked the</p> <p>23 document yet.</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 BY MS. GOODMAN:</p>


<p style="text-align: right;">Page 126</p> <p>1 Q. I was talking to your counsel.</p> <p>2 A. Oh.</p> <p>3 Q. Go ahead. I'm sorry.</p> <p>4 A. I mean, those are some of the top-line</p> <p>5 items.</p> <p>6 Q. What are Gross Leads?</p> <p>7 A. A Gross Lead is anyone who raises their</p> <p>8 hand, whether that be via taking the call to</p> <p>9 action on an ad and/or completing an RFI, or</p> <p>10 Request For Information, on Navy.com. But it's</p> <p>11 an unfiltered lead that hasn't been looked at for</p> <p>12 qualification.</p> <p>13 Q. And so what is a Qualified and</p> <p>14 Interested Lead?</p> <p>15 A. A Qualified and Interested Lead is a</p> <p>16 lead that has passed the basic qualifications</p> <p>17 of age, citizenship and education and has also</p> <p>18 positively answered a number of what we call</p> <p>19 blueprinting questions, which are questions</p> <p>20 that ask more in-depth about the person, height,</p> <p>21 weight, felony and criminal use -- drug use,</p> <p>22 those types of questions, and have been found to</p> <p>23 meet all of those qualifications and has still</p> <p>24 indicated interest in talking to a recruiter.</p> <p>25 Q. And what -- when you were speaking</p>	<p style="text-align: right;">Page 128</p> <p>1 source from a national advertising lead. And</p> <p>2 then additionally, what we do is look at our</p> <p>3 NALTS system, which is the National Advertising</p> <p>4 Lead Tracking System, and compare it to all the</p> <p>5 names of the people who contracted for the month</p> <p>6 and look to see if there was an earlier date in</p> <p>7 NALTS.</p> <p>8 Q. So is it possible for a digital ad to be</p> <p>9 the source from which a contract is derived?</p> <p>10 A. Yes.</p> <p>11 Q. Can you give an example of where a</p> <p>12 digital ad may be the source from which a</p> <p>13 contract is derived?</p> <p>14 A. Sure. If someone clicks on an ad and</p> <p>15 they're taken to Navy.com to fill out the RFI,</p> <p>16 the Request For Information, that person could</p> <p>17 become a lead and could then become a contract</p> <p>18 and then it could be tied back to that ad via the</p> <p>19 DEC code that's embedded, the -- I don't remember</p> <p>20 the exact acronym, but it's a code that's</p> <p>21 embedded so we're able to tell where the person</p> <p>22 came from.</p> <p>23 Q. Okay. What kinds of digital ads, from</p> <p>24 your point of view, have been most successful in</p> <p>25 leading to contracts?</p>
<p style="text-align: right;">Page 127</p> <p>1 about KPIs, describe for me what the contract KPI</p> <p>2 means?</p> <p>3 MR. MCBIRNEY: Objection to the extent</p> <p>4 it calls for a legal conclusion.</p> <p>5 THE WITNESS: Can you be more specific?</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Well, you said one of your KPIs is</p> <p>8 contracts, correct?</p> <p>9 A. Okay.</p> <p>10 Q. What do you mean?</p> <p>11 A. Sure. What I mean by that is two</p> <p>12 items: One, the overall number of contracts</p> <p>13 that we get at Navy Recruiting Command. And a</p> <p>14 contract is putting someone in the Navy, then</p> <p>15 contracting to join the Navy. The second is the</p> <p>16 number of contracts derived from marketing and</p> <p>17 advertising efforts directly.</p> <p>18 Q. And how do you -- how does the Navy, to</p> <p>19 your knowledge, go about calculating the number</p> <p>20 of contracts derived from marketing and</p> <p>21 advertising efforts directly?</p> <p>22 A. Sure. There's two ways. One, there's</p> <p>23 a lead source indicator on the record of that</p> <p>24 person. And if it's accurately captured, it</p> <p>25 would say that they came in as a -- as a lead</p>	<p style="text-align: right;">Page 129</p> <p>1 A. I can't list a specific type of ad,</p> <p>2 because it's the marketing mix that brings in</p> <p>3 leads. Ads by themselves may just be creating</p> <p>4 awareness and may or may not result in someone</p> <p>5 deciding to walk into a recruiting station,</p> <p>6 in which case we'd never be able to directly</p> <p>7 attribute that. So it's the marketing mix</p> <p>8 overall that we look at.</p> <p>9 Q. So before you described that somebody</p> <p>10 could click on an ad, go to Navy.com, fill out</p> <p>11 the RFI, become a lead and then become a contract</p> <p>12 and you talked about a DEC code --</p> <p>13 A. Mm-hmm.</p> <p>14 Q. -- that's embedded, so you're able to</p> <p>15 tell where the person came from. So in that</p> <p>16 particular scenario where you can tell what kind</p> <p>17 of digital ad the person came from, do you have a</p> <p>18 view as to which kinds of digital ads are most</p> <p>19 successful in leading to a contract?</p> <p>20 A. I do not, because those numbers are</p> <p>21 -- are extremely small, usually. So sitting here</p> <p>22 today, I cannot -- I cannot answer that question.</p> <p>23 Q. Okay. And you also talked about the</p> <p>24 marketing mix that brings in leads. What do you</p> <p>25 mean by that?</p>

<p style="text-align: right;">Page 130</p> <p>1 A So we know that someone's decision to</p> <p>2 join the Navy is not based off of seeing an ad</p> <p>3 or, you know, one thing in particular, but that</p> <p>4 it's multiple touch points And so we look at</p> <p>5 our marketing mix as providing all of those touch</p> <p>6 points to influence someone's decision to join</p> <p>7 Q And what are the kinds of touch points</p> <p>8 that you consider as part of your marketing mix</p> <p>9 -- mix when influencing somebody's decision to</p> <p>10 join the Navy?</p> <p>11 A Sure It could be seeing a commercial,</p> <p>12 seeing a display ad It could be seeing a</p> <p>13 recruiter in their high school It could be</p> <p>14 attending an air show and seeing the Blue Angels;</p> <p>15 a piece of direct mail that tells them about a</p> <p>16 bonus Those types of things</p> <p>17 Q Okay How about social media? Is that</p> <p>18 a touch point?</p> <p>19 A Yes</p> <p>20 Q And how about online video? Is that a</p> <p>21 touch point?</p> <p>22 A Yes</p> <p>23 (Exhibit No 56, a document Bates</p> <p>24 Numbered NAVY-ADS15543 through NAVY-ADS15622, was</p> <p>25 introduced)</p>	<p style="text-align: right;">Page 132</p> <p>1 A. It's important to me that my team sees</p> <p>2 those figures so they can look at it, analyze it</p> <p>3 and identify any discrepancies or questions. But</p> <p>4 I myself don't routinely look at that</p> <p>5 spreadsheet.</p> <p>6 Q. And so this document -- this email also</p> <p>7 attaches the EOM reports. Are those the</p> <p>8 end-of-month reports?</p> <p>9 A. Yes, they are.</p> <p>10 Q. Okay. And do you routinely review the</p> <p>11 end-of-month reports as director of marketing?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Okay. If you turn to Page 15566, what</p> <p>14 are priority channel reviews reflected on this</p> <p>15 page?</p> <p>16 A. Give me just a moment to --</p> <p>17 (Reviews document).</p> <p>18 So the priority channel reviews on Page</p> <p>19 15566 are showing a few different things. To the</p> <p>20 left-hand side, you're looking at the cyber</p> <p>21 qualified and interested lead trends, as well as</p> <p>22 the gross new contract trends. In the middle</p> <p>23 you're looking at walk-ins. And as I testified</p> <p>24 earlier, we know that our marketing has an</p> <p>25 indirect impact on folks deciding to walk into a</p>
<p style="text-align: right;">Page 131</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. Okay. I'm handing you Exhibit 56,</p> <p>3 NAVY-ADS15543 through 15622. And because it is</p> <p>4 a lengthy document, I will guide you through it</p> <p>5 in my questioning. And I just want to start at</p> <p>6 the cover email, which is from Timorie Belk to</p> <p>7 Jennifer Kelly, yourself, Suzanne Ray, Demetra</p> <p>8 Sangster, and others, attaching a Data Czar Bible</p> <p>9 and an October 2022 Analytics Assessment and</p> <p>10 October '22 Channel Summary.</p> <p>11 My question to you, sir, is what is a</p> <p>12 Data Czar Bible?</p> <p>13 A. Sure. The Data Czar Bible is a</p> <p>14 spreadsheet that has all of the raw data that</p> <p>15 supports the figures that are put together in the</p> <p>16 end of month report.</p> <p>17 Q. The -- sorry. I missed -- I may not</p> <p>18 have heard that fully. The raw data in the Data</p> <p>19 Czar Bible are -- support the figures that are</p> <p>20 put together in what report?</p> <p>21 A. The end-of-month, EOM, report.</p> <p>22 Q. Okay. Is it important to you to see the</p> <p>23 figures in the Data Czar Bible on a regular basis</p> <p>24 in your role as director of marketing at the</p> <p>25 Navy?</p>	<p style="text-align: right;">Page 133</p> <p>1 recruiting station, so that's why that's being</p> <p>2 looked at, as well as PDC, which stands for</p> <p>3 Personally Developed Contact. So it's usually</p> <p>4 another way that the recruiter will record if</p> <p>5 they meet someone.</p> <p>6 If someone walks up to them at an</p> <p>7 event, they'll record it as a PDC. If that's</p> <p>8 a marketing event, that could be considered a</p> <p>9 marketing lead. So that's where there's a line</p> <p>10 that gets blurred.</p> <p>11 Q. So in this slide, what does "cyber"</p> <p>12 mean? What are some of the examples of how</p> <p>13 somebody is a cyber-qualified and interested lead</p> <p>14 or a cyber GNC?</p> <p>15 A. Sure. Cyber is a team of recruiters</p> <p>16 that work for me that answer when someone wants</p> <p>17 to chat on Navy -- excuse me -- on Navy.com.</p> <p>18 Q. Okay. Please turn to 15583. And I'm</p> <p>19 looking under Highlights by Channel where it says</p> <p>20 Story-telling Channels.</p> <p>21 A. Mm-hmm.</p> <p>22 Q. You see it says Digital/Video?</p> <p>23 A. Yes.</p> <p>24 Q. First question is, do you have any</p> <p>25 understanding as to why digital and video are</p>

<p style="text-align: right;">Page 202</p> <p>1 wanted to change that 520k from Trade Desk to</p> <p>2 either YouTube, Amazon or anything else, --</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay.</p> <p>5 A. -- but that within the realms of the</p> <p>6 Trade Desk they would be able to allocate it</p> <p>7 according to how this reads.</p> <p>8 Q. And if they wanted to make adjustments</p> <p>9 in realtime to switch, for example, between</p> <p>10 Connected TV on the Trade Desk and banner ads on</p> <p>11 the Trade Desk, they had authority to do that</p> <p>12 so long as they stayed within the \$520,000</p> <p>13 authorized. Is that accurate?</p> <p>14 A. Yeah. My -- my testimony is that if</p> <p>15 they were going to deviate from the Trade Desk to</p> <p>16 any of the other companies, they would need to</p> <p>17 seek approval. But, otherwise, they would not.</p> <p>18 Q. And so, therefore, in the circumstance</p> <p>19 I'm describing, which is limited to spending</p> <p>20 money via the Trade Desk, okay, if VMLY&R thought</p> <p>21 it best to move \$1 from Connected TV on the Trade</p> <p>22 Desk to \$1 on banner ads on the Trade Desk as</p> <p>23 they are watching how the campaign is performing,</p> <p>24 they had the authority to do so without seeking</p> <p>25 your approval, correct?</p>	<p style="text-align: right;">Page 204</p> <p>1 so long as VMLY&R adheres to the approved plan,</p> <p>2 they do not need to seek my approval.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And do you know, is it VMLY&R who</p> <p>5 are -- who is making these realtime optimization</p> <p>6 decisions, or is it somebody else?</p> <p>7 MR. MCBIRNEY: Objection; vague.</p> <p>8 THE WITNESS: Yeah. I don't know the</p> <p>9 exact person who's making optimizations.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Do you know what company that the person</p> <p>12 who makes the optimizations works for, whether it</p> <p>13 be VMLY&R or Wavemaker or somebody else?</p> <p>14 A. I'm not privy to the exact legal</p> <p>15 business relationship between Wavemaker and</p> <p>16 VMLY&R, but I know that per my contract with</p> <p>17 VMLY&R that they would have someone on the team</p> <p>18 making these realtime optimizations.</p> <p>19 Q. Okay. I'm not asking about the business</p> <p>20 relationship or the legal relationship. I'm</p> <p>21 asking whether you know, in your capacity as the</p> <p>22 director of marketing based on your experience</p> <p>23 working in that job on these digital ad buys over</p> <p>24 the last three-plus years, do you know who makes</p> <p>25 the realtime optimization decisions?</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. MCBIRNEY: Objection. Asked and</p> <p>2 answered.</p> <p>3 THE WITNESS: My testimony, as I've</p> <p>4 stated, is that if the ad agency, VMLY&R, was to</p> <p>5 deviate from this approved plan they would need</p> <p>6 to seek my approval; however, if they are not</p> <p>7 deviating from what's stated in this approved</p> <p>8 plan, they would not need to seek my approval.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. So the answer is yes.</p> <p>11 MR. MCBIRNEY: Objection. Asked and</p> <p>12 answered. Mischaracterizes the testimony.</p> <p>13 THE WITNESS: Again, my testimony is if</p> <p>14 they're going to deviate from an approved plan,</p> <p>15 they would seek my approval. Otherwise, they</p> <p>16 would not have to seek my approval.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. Therefore, they don't need</p> <p>19 to seek your approval in order to move \$1 from</p> <p>20 Online Banner ads to Connected TV so long as that</p> <p>21 single dollar is within the \$520,000 approved in</p> <p>22 this particular instance. Is that accurate?</p> <p>23 MR. MCBIRNEY: Objection. Asked and</p> <p>24 answered. Mischaracterizes testimony.</p> <p>25 THE WITNESS: So it's my testimony that</p>	<p style="text-align: right;">Page 205</p> <p>1 A. I -- sitting here today, I do not know</p> <p>2 who makes that realtime optimization.</p> <p>3 Q. Okay. Do you know, not their name, but</p> <p>4 the company for which they work?</p> <p>5 MR. MCBIRNEY: Objection; vague.</p> <p>6 THE WITNESS: Yeah. I -- sitting here</p> <p>7 today, I can't be certain if it would be VMLY&R</p> <p>8 or Wavemaker.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay. And could it be somebody at the</p> <p>11 Trade Desk making those realtime optimization</p> <p>12 decisions?</p> <p>13 MR. MCBIRNEY: Objection; foundation.</p> <p>14 THE WITNESS: Sitting here today, I</p> <p>15 don't know.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Okay. Let's go back to that spreadsheet</p> <p>18 attached to Exhibit 58. I just have one question</p> <p>19 at the end of it.</p> <p>20 A. Sure.</p> <p>21 Q. When we were looking at the</p> <p>22 Recommended Partners, the one on the first page</p> <p>23 of this spreadsheet, --</p> <p>24 A. Yes.</p> <p>25 Q. -- it's accurate that these are all</p>

<p style="text-align: right;">Page 206</p> <p>1 partners that the Navy is using at the same</p> <p>2 time with respect to digital ad spend. Is that</p> <p>3 accurate?</p> <p>4 A. Maybe not exactly the way you described,</p> <p>5 because it's broken down into months.</p> <p>6 Q. Okay.</p> <p>7 A. So, for instance, YouTube Masthead looks</p> <p>8 to appear in September but not July and August.</p> <p>9 Q. Okay. So the -- the companies or part</p> <p>10 -- partners who have dollars allocated to them in</p> <p>11 the month of September, those are all being used</p> <p>12 at the same time. Is that accurate?</p> <p>13 A. Sitting here today, to the best of my</p> <p>14 knowledge, yes.</p> <p>15 MS. GOODMAN: Okay. Shall we take a</p> <p>16 break?</p> <p>17 MR. MCBIRNEY: Sure.</p> <p>18 THE VIDEOGRAPHER: The time is 4:37 p m.</p> <p>19 This ends Unit 4. We're off the record.</p> <p>20 (Recess taken.)</p> <p>21 THE VIDEOGRAPHER: The time is 4:54 p m.</p> <p>22 This begins Unit Number 5. We're on the record.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. Mr. Owens, have you heard the term Open</p> <p>25 Web Display advertising?</p>	<p style="text-align: right;">Page 208</p> <p>1 advertising?</p> <p>2 A. Sure. Display advertising could be ads</p> <p>3 placed on unique individual websites.</p> <p>4 (Whereupon realtime feed froze due to</p> <p>5 internet disconnection.)</p> <p>6 THE REPORTER: I think it stopped. Can</p> <p>7 we --</p> <p>8 MS. GOODMAN: Yeah. Let's take a break.</p> <p>9 THE VIDEOGRAPHER: The time is 4:57 p m.</p> <p>10 We're going off the record.</p> <p>11 (Recess taken.)</p> <p>12 THE VIDEOGRAPHER: The time is 5:03 p m.</p> <p>13 We're on the record.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Mr. Owens, does the term Display</p> <p>16 Advertising, as you understand it, include</p> <p>17 placing ads on websites through a direct deal</p> <p>18 between the publisher and the advertiser?</p> <p>19 MR. MCBIRNEY: Objection; foundation.</p> <p>20 THE WITNESS: Display Advertising, as I</p> <p>21 know it, is advertising by the use of display</p> <p>22 ads, to my knowledge.</p> <p>23 BY MS. GOODMAN:</p> <p>24 Q. Okay. And, to your knowledge, just</p> <p>25 again for the record, what is your understanding</p>
<p style="text-align: right;">Page 207</p> <p>1 A. I have heard that term.</p> <p>2 Q. What do you understand it to mean?</p> <p>3 A. I'm not certain the exact meaning of</p> <p>4 Open Web Display advertising.</p> <p>5 Q. Aside from its exact meaning, what do</p> <p>6 you generally understand that term to mean?</p> <p>7 A. I generally understand it to mean</p> <p>8 display advertising.</p> <p>9 Q. And when you say "display advertising,"</p> <p>10 what do you mean by that?</p> <p>11 A. Placement of display ads.</p> <p>12 Q. And does display advertising include</p> <p>13 placement of display ads on the New York Times,</p> <p>14 if they're purchased directly from the New York</p> <p>15 Times?</p> <p>16 MR. MCBIRNEY: Objection; foundation.</p> <p>17 THE WITNESS: Yeah. I -- again, I don't</p> <p>18 have a -- a firm enough understanding of that</p> <p>19 term specifically to -- to answer in any more</p> <p>20 detail than that.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Okay. Are you aware of any different</p> <p>23 kinds of display ads or -- when you -- strike</p> <p>24 that.</p> <p>25 Can you give any examples of display</p>	<p style="text-align: right;">Page 209</p> <p>1 of the term Open Web Display Advertising?</p> <p>2 MR. MCBIRNEY: Objection; foundation.</p> <p>3 Asked and answered.</p> <p>4 THE WITNESS: As I testified, I'm</p> <p>5 familiar with the term; however, I don't know the</p> <p>6 definition of Open Web Display Advertising.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. How are you familiar with the term Open</p> <p>9 Web Display Advertising?</p> <p>10 A. I've -- I've seen the term. But,</p> <p>11 again, I -- I can't describe to you exactly the</p> <p>12 definition of that. But, in general terms, I</p> <p>13 understand it to be, as stated earlier, Display</p> <p>14 Advertising.</p> <p>15 BY MS. GOODMAN:</p> <p>16 Q. Okay. Where have you seen the term Open</p> <p>17 Web Display Advertising?</p> <p>18 A. I can't recollect exactly where I saw</p> <p>19 it.</p> <p>20 Q. Generally speaking, can you describe</p> <p>21 anywhere you've seen the term Open Web Display</p> <p>22 Advertising, such as in emails or documents</p> <p>23 with your ad agency, on -- on other websites</p> <p>24 discussing the advertising industry, any place</p> <p>25 that you recall seeing that term?</p>

<p style="text-align: right;">Page 210</p> <p>1 MR. MCBIRNEY: Object to form.</p> <p>2 THE WITNESS: Sitting here today, I -- I</p> <p>3 cannot remember where I've seen that term.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Do you recall ever seeing it in any</p> <p>6 documents provided to you by VMLY&R?</p> <p>7 A. As mentioned a moment ago, I cannot</p> <p>8 recall where I've seen the term.</p> <p>9 Q. And, thus, you don't know whether you've</p> <p>10 seen it in any documents provided by VMLY&R,</p> <p>11 correct?</p> <p>12 MR. MCBIRNEY: Objection. Asked and</p> <p>13 answered. Mischaracterizes the testimony.</p> <p>14 THE WITNESS: Yeah. As I -- as I</p> <p>15 testified, I don't recollect where I've seen the</p> <p>16 term.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. Have you had any discussions</p> <p>19 with anybody about the term Open Web Display</p> <p>20 Advertising and what it means?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Prior to the filing of this lawsuit</p> <p>23 in January of 2023, were you aware of any</p> <p>24 anticompetitive conduct on the part of Google</p> <p>25 affecting Navy's advertising?</p>	<p style="text-align: right;">Page 212</p> <p>1 MR. MCBIRNEY: Objection. Assumes</p> <p>2 facts.</p> <p>3 THE WITNESS: Oftentimes, a lot of the</p> <p>4 businesses that we use will be referred to as a</p> <p>5 partner if we're doing business with them, so</p> <p>6 I -- I may have referred to Google as a partner.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Has Google helped the Navy with respect</p> <p>9 to recruiting more sailors to join?</p> <p>10 MR. MCBIRNEY: Objection; foundation.</p> <p>11 THE WITNESS: We have found lots of</p> <p>12 value in many of the Google buys that we've done.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And the Google buys that you've done</p> <p>15 that you've found value in, does that relate to</p> <p>16 YouTube buys?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And how about with respect to</p> <p>19 search?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Can you describe in any more</p> <p>22 detail the value that you have found in many of</p> <p>23 the Google buys that the Navy has done?</p> <p>24 A. In particular, some of the YouTube</p> <p>25 activations we've had have had extremely high</p>
<p style="text-align: right;">Page 211</p> <p>1 MR. MCBIRNEY: You can answer that</p> <p>2 question to the extent it does not disclose</p> <p>3 communications with counsel.</p> <p>4 THE WITNESS: To my knowledge, no.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. And how about prior to this lawsuit,</p> <p>7 did you ever have any concerns in your capacity</p> <p>8 as the director of marketing for the Navy</p> <p>9 Recruiting Command that Google was engaging in</p> <p>10 anticompetitive conduct related to digital</p> <p>11 advertising?</p> <p>12 MR. MCBIRNEY: Objection to foundation.</p> <p>13 THE WITNESS: Prior to this, I had no</p> <p>14 knowledge of nor reason to suspect that of</p> <p>15 Google.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Prior to this lawsuit, did you have</p> <p>18 ever -- did you ever have any concerns that</p> <p>19 Google was engaging in any conduct that was</p> <p>20 causing the Navy harm with respect to its digital</p> <p>21 advertising?</p> <p>22 A. Sitting here today, I can -- I can think</p> <p>23 of no reason to believe that.</p> <p>24 Q. You described Google, in fact, as a</p> <p>25 partner of the Navy, right?</p>	<p style="text-align: right;">Page 213</p> <p>1 video completion rates.</p> <p>2 Q. Any other --</p> <p>3 THE VIDEOGRAPHER: Counsel, the Zoom's</p> <p>4 offline.</p> <p>5 MS. GOODMAN: Let's take a break.</p> <p>6 MR. MCBIRNEY: We're going to be here a</p> <p>7 while.</p> <p>8 THE VIDEOGRAPHER: The time is 5:07 p m.</p> <p>9 We're going off the record.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: Time is 5:14 p.m.</p> <p>12 We're on the record.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Mr. Owens, can you describe any other</p> <p>15 instances that the Navy has found value in any of</p> <p>16 the Google buys that it has done?</p> <p>17 A. Paid search, as well. We've found value</p> <p>18 there.</p> <p>19 I don't have a list at the ready, but</p> <p>20 -- but there's -- it's been on many occasions.</p> <p>21 Q. Can you approximate the number of</p> <p>22 occasions that you've found value in Google buys</p> <p>23 for the Navy?</p> <p>24 MR. MCBIRNEY: Objection; foundation.</p> <p>25 THE WITNESS: Yeah. I -- I can't</p>

<p style="text-align: right;">Page 278</p> <p>1 Q. Other than yourself, was there</p> <p>2 any person who is not a lawyer who provided</p> <p>3 information that assisted in responding to the</p> <p>4 interrogatories that you verified?</p> <p>5 MR. MCBIRNEY: Objection to foundation.</p> <p>6 THE WITNESS: Yeah. As I -- as I</p> <p>7 testified earlier, I did have members of my</p> <p>8 team assist me in providing my response to the</p> <p>9 interrogatories.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. Anybody outside of members of</p> <p>12 your team assist in providing information to help</p> <p>13 in res -- responding to the interrogatories?</p> <p>14 MR. MCBIRNEY: Same objection.</p> <p>15 THE WITNESS: Not that I recall.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. Anybody at Wavemaker provide information</p> <p>18 that assisted in responding to these</p> <p>19 interrogatories?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Same question as to VMLY&R.</p> <p>22 A. Not that I recall.</p> <p>23 Q. Did Mr. Edmondson provide any</p> <p>24 information that was -- that assisted in</p> <p>25 responding to the interrogatories that you</p>	<p style="text-align: right;">Page 280</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I do hereby certify that I am a Notary</p> <p>4 Public in good standing, that the aforesaid</p> <p>5 testimony was taken before me, pursuant to</p> <p>6 notice, at the time and place indicated; that</p> <p>7 said deponent was by me duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the</p> <p>9 truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition</p> <p>13 is a true and correct record of the testimony</p> <p>14 given by the witness; and that I am neither of</p> <p>15 counsel nor kin to any party in said action, nor</p> <p>16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this</p> <p>19 17th day of</p> <p>20 </p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 279</p> <p>1 verified?</p> <p>2 A. I would consider him to be covered under</p> <p>3 the question of VMLY&R, so not that I recall.</p> <p>4 Q. Same question as to Sandra Mouio?</p> <p>5 A. And same response. I would consider her</p> <p>6 to be part of the Wavemaker entity, so not that I</p> <p>7 recall.</p> <p>8 MR. MCBIRNEY: Can I get a check on the</p> <p>9 time?</p> <p>10 THE VIDEOGRAPHER: 7:02.</p> <p>11 MR. MCBIRNEY: I guess that's time.</p> <p>12 MS. GOODMAN: Thank you for your time,</p> <p>13 Mr. Owens.</p> <p>14 THE VIDEOGRAPHER: Off the record,</p> <p>15 Counsel?</p> <p>16 MS. GOODMAN: Yes.</p> <p>17 MR. MCBIRNEY: Off the record.</p> <p>18 THE VIDEOGRAPHER: The time is 7:03 p.m.</p> <p>19 We're off the record.</p> <p>20 (Deposition concluded -- 7:02 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 281</p> <p>1 Jimmy McBirney, Esq.</p> <p>2 jimmy.mcbirney@usdoj.gov</p> <p>3 August 17, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/15/2023, Allen Owens (#6037511)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>